

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL D. MORTIERE, Personal
Representative of the Estate of CLAUDETTE
MORTIERE, Deceased,

UNPUBLISHED
May 19, 2015

Plaintiff-Appellee,

v

HENRY FORD HEALTH SYSTEM, doing
business as HENRY FORD HOSPITAL, MOSHIN
ALAM, M.D., and DR. KHALID KAHOOK,

No. 320411
Wayne Circuit Court
LC No. 13-015874-NH

Defendants-Appellants,

and

HEARTLAND-OAKLAND MI, LLC, doing
business as HEARTLAND HEALTH CARE
CENTER-OAKLAND,

Defendant.

Before: TALBOT, C.J., and CAVANAGH and METER, JJ.

PER CURIAM.

Defendants, Henry Ford Health System, Dr. Moshin Alam, and Dr. Khalid Kahook, (defendants) appeal by leave granted an order denying their motion to change venue in this medical malpractice action. We reverse.

Plaintiff filed this action in Wayne Circuit Court, alleging a breach of the standard of care arising from his decedent's discharge from Henry Ford Hospital in Detroit without appropriate treatment and despite laboratory tests showing an elevated risk of developing blood clots and related complications, including stroke. Consequently, plaintiff alleged, his decedent suffered a stroke within an hour of arriving to her home in Oakland County after her discharge, which eventually led to her death. Defendants answered plaintiff's complaint and filed a motion to change venue, arguing that venue was proper in Oakland County because plaintiff's decedent suffered her original injury—the stroke—in Oakland County. Plaintiff opposed the motion, arguing that the original injury occurred in Wayne County because that is where his decedent's

stroke began and where her laboratory tests showed blood abnormalities. The trial court agreed with plaintiff, and denied defendants' motion. This appeal followed.

Defendants argue that their motion to change venue should have been granted because, under MCL 600.1629, venue is proper in Oakland County, not Wayne County. After review of the trial court's decision for clear error, we agree. See *Taha v Basha Diagnostics, PC*, 275 Mich App 76, 77; 737 NW2d 844 (2007).

MCL 600.1629(1) provides, in pertinent part:

Subject to subsection (2), in an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, all of the following apply:

(a) The county in which the original injury occurred and in which either of the following applies is a county in which to file and try the action:

(i) The defendant resides, has a place of business, or conducts business in that county.

(ii) The corporate registered office of a defendant is located in that county.

MCL 600.1629(1) generally determines the proper venue in tort actions; its language "clearly and unambiguously limits venue to the situs of the original injury when either the defendant or the plaintiff resides, does business, or has a corporate office there." *Dimmitt & Owens Fin, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618, 628; 752 NW2d 37 (2008).

The term "original injury" is not statutorily defined, but this Court previously "analyzed what constitutes an original injury in *Taha* . . . holding that 'to determine venue in tort actions, it is necessary to identify the actual place of occurrence of the damage or injury that gives rise to the plaintiff's cause of action.' " *Dimmitt & Owens Fin, Inc*, 481 Mich at 629 (quoting *Taha*, 275 Mich App at 78). "In the medical-malpractice context, it is clear that the plaintiff's injury is not merely the defendant's alleged failure to meet the recognized standard of care. Instead, the plaintiff's injury is the corporeal harm *that results from* the defendant's alleged failure to meet the recognized standard of care." *Taha*, 275 Mich App at 79. Likewise, "in a wrongful death action, venue rests with the county where the injury resulting in death occurred . . ." *Karpinski v St John Hosp-Macomb Ctr Corp*, 238 Mich App 539, 544; 606 NW2d 45 (1999).

In *Dimmitt*, our Supreme Court explained that "*Taha* highlights the importance of separating a breach of the standard of care from the injury caused by the breach. Many negligent acts or omissions may occur that for whatever reason do not result in an actual injury." *Dimmitt*, 481 Mich at 630. It is "the first injury *resulting from* an act or omission of a defendant" that is determinative of venue under MCL 600.1629(1), "not the original breach of the standard of care." *Id.* Moreover, "a merely speculative injury" is insufficient—"a *present* injury, not fear of an injury in the future," is required to establish venue. *Id.* at 631 (quoting *Henry v Dow Chem Co*, 473 Mich 63, 72-73; 701 NW2d 684 (2005)).

Plaintiff offers no evidence to contest the fact that defendants do business in Oakland County. Instead, the dispute here revolves around whether decedent’s “original injury” occurred in Wayne County or Oakland County.¹

Plaintiff cites medical literature and argues that it is “more likely than not” that the stroke actually began in Wayne County. Plaintiff also contends that decedent’s original injury was the formation of a blood clot that “likely first originated” in Wayne County. But plaintiff provides no evidence specific to his decedent to show when her blood clot formed or when she suffered the stroke. Plaintiff’s claims in this regard are merely speculative. On the contrary, plaintiff’s evidence indicates that the decedent’s symptoms only became apparent after she arrived home in Oakland County, and that she was subsequently taken to a hospital in Oakland County where she was diagnosed with a potential stroke. Indeed, the record indicates that the onset of decedent’s stroke symptoms occurred roughly an hour after she was discharged by defendants in Wayne County.

Plaintiff alternatively argues that decedent’s original injury was her premature, negligent discharge from the hospital. But decedent’s discharge from the hospital is the alleged deviation from the standard of care, not the resulting harm, and mere speculation about the timing of decedent’s injury is insufficient to establish the propriety of venue in Wayne County. See *Dimmitt*, 481 Mich at 630-631. Decedent’s stroke was the corporeal harm that resulted from the alleged deviation of the standard of care by defendants. Thus, it is the stroke that constitutes decedent’s original injury under MCL 600.1629. See *Taha*, 275 Mich App at 79. Plaintiff speculates that decedent *probably* suffered the beginnings of a stroke or a blood clot in Wayne County, but the evidence cited by plaintiff in the trial court demonstrates that decedent *did* display stroke symptoms in Oakland County. Therefore, looking at the proper record on appeal, plaintiff has failed to prove that decedent’s original injury occurred in Wayne County.

Likewise, plaintiff’s argument that convenience and judicial economy favor venue in Wayne County is unavailing. The plain language of MCL 600.1629(1) controls the determination of venue here. *Dimmitt*, 481 Mich at 628. Furthermore, plaintiff brought suit as the personal representative of decedent’s estate, which is under administration in Oakland County Probate Court. Since decedent’s estate is located in Oakland County, judicial economy would seem to favor venue in that same county.

¹ For the first time on appeal, plaintiff cites deposition testimony—which was taken after the trial court denied defendants’ motion to change venue—in support of plaintiff’s new argument that decedent showed symptoms of a stroke while she was still in Wayne County under the care of defendants. Because such testimony was not presented to the trial court before it ruled on the motion at issue, this represents an impermissible attempt by plaintiff to enlarge the record on appeal. See, e.g., *Mich AFSCME Council 25 v Woodhaven-Brownstown Sch Dist*, 293 Mich App 143, 146; 809 NW2d 444 (2011). Thus, we decline to consider such testimony.

Accordingly, we are left with the definite and firm conviction that a mistake was made by the trial court. Pursuant to MCL 600.1629, venue in this tort action is proper in Oakland County, not Wayne County; hence, the trial court clearly erred in denying defendant's motion to change venue.

We reverse and remand for entry of an order granting defendants' motion to transfer the lower court proceedings to Oakland Circuit Court. We do not retain jurisdiction.

/s/ Michael J. Talbot

/s/ Mark J. Cavanagh

/s/ Patrick M. Meter